IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1879 OF 2006

Smt.Tulsibai @ Vanshi Shankar Vaijal — Petitioner
vs.
The State of Maharashtra & ors. — Respondents

Mr.Abhay Patki for the petitioner.

Mr.Milind More, AGP for respondents 1 to 3.

Mr.Girish S. Godbole with Mr.Ayaz Bilawala & Ms.Rashida Kutty i/b.M/s.Bilawala & Co. for respondent no.5.

CORAM : F.I.REBELLO &
ANOOP V. MOHTA,JJ.

DATED : 14th November, 2006

P.C.

Appearance has been put up on behalf of the respondents 1, 2 and 3. Respondent no.4 though served has failed to put up appearance. Respondent no.5 has put up his appearance.

2. Rule. Heard forthwith.

3. The petitioner has approached this court against the order of the Scheduled Tribe Certificate Scrutiny Committee, Konkan Division, Thane dated 21st May 2005. The petitioner claims to belong to the Warli scheduled tribe - a notified scheduled tribe. The Committee, on scrutiny, came to the conclusion that the petitioner did not produce any documentary evidence in support of her

claim as belonging to the Warli S.T. The Investigating Officer of the Committee had submitted a report. In the report it is set out as under:

> "The traits, characteristics, customs as well as the surnames of the relatives of the applicant and her family match with that of the Warli S.T. community."

This report has been rejected by the Committee in one line which reads as under:

> "The report submitted by the Circle Officer, Kurar is very superficial and pertains to her alleged husband's place only"

The Committee at point 12 had noted as under:

> "She has to prove her alleged tribe claim by birth from her paternal side and not through her husband."

4. There are two issues involved in this case (1) Whether the petitioner herself belongs to a notified Scheduled Tribe and (2) whether she was legally married and/or claimed to be wife of Shankar Janya and consequently her right to the property if claimed through her husband. We did not find anywhere the issue as to whether the Shankar Janya himself was not a Scheduled Tribe was in issue. At any rate that issue need not be gone into.

. If the Committee was considered the tribe status of the petitioner then in the absence of any documentary evidence, the Vigilance Officer had to conduct an enquiry and submit a report. In the instant case, the report was submitted. Consequently the issue that follows is whether the report had to be accepted or not. That report has been rejected by a one line order of the committee. The Vigilance Officer is a part of the mechanism to find out the documentary evidence as well as tribe traits and characteristics. If the report of the Vigilance Officer was perfunctory, the committee ought to have asked the officer concerned to submit a detailed report. There is total failure on the part of the Committee in this respect. The report has been rejected and thereby a valuable right of the petitioner has for all time being denied. This clearly discloses an error apparent on the part of the Committee and consequently is liable to be set aside.

5. The issue whether the petitioner was legally married to Shankar Janya and consequently is entitled to his estate and share in the estate is an issue which could not have been decided by the Committee. That is an issue in the realm of the Civil Court and had to be decided by the Civil Court. The exercise done by the Committee on that count is clearly without jurisdiction.

6. For the aforesaid reasons, the impugned order dated 21st May 2005 is set aside. The matter is remanded back to the committee. We direct the Investigating Officer to conduct a fresh enquiry and submit a report to be made available to the petitioner and to the contesting respondents. The petitioner if has any other documents is entitled to file the same before the Committee. The Committee to consider that documentary evidence if produced, as also the report of the Committee and thereafter decide the matter according to law at any rate not later than six months from today.

7. Rule made absolute accordingly. There shall be no order as to costs.

(F.I. REBELLO, J.)

(ANOOP V. MOHTA,J.)